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PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q64239

Terrence Martin HINDS, et al.

Appln. No.: 09/782,036

Group Art Unit: 1733

Confirmation No.: 8219

Examiner: Steven D. Maki

Filed: February 14, 2001

For: A METHOD FOR MANUFACTURING A FLOOR COVERING

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated October 19, 2004. Entry of this Reply Brief is respectfully requested.

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STATUS OF CLAIMS

Claims 1-5, 8, 10-23, and 25-32, are pending, are rejected, and are the subject of this appeal.

Claims 6, 7, 9, and 24, have been canceled, and are not the subject of this appeal.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1st Ground of Rejection (Issue 1)

Whether claims 1-5, 10-23, and 25-32, properly are rejected under §103(a) as being unpatentable over US Patent 4,396,566 to Brinkmann et al. (hereinafter Brinkmann) in view of US Patent 4,510,201 to Takeuchi et al. (hereinafter Takeuchi) and US Patent 4,743,187 to Schermutzki (hereinafter Schermutzki) and in view of US Patent 3,385,722 to Weaver et al. (hereinafter Weaver) and / or US Patent 2,960,727 to Bradshaw et al. (hereinafter Bradshaw).

2nd Ground of Rejection (Issue 2)

Whether claim 8 properly is rejected under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of US Patent 4,997,507 to Meyer (hereinafter Meyer) and US Patent 3,883,386 to Garbini et al. (hereinafter Garbini).

3rd Ground of Rejection (Issue 3)

Whether claims 13-17, 19, and 20, properly are rejected under §103(a) as being unpatentable over Brinkmann in view of Takeuchi and Schermutzki and in view of Weaver and/or Bradshaw, and further in view of the admitted prior art as set forth in the specification at page 1, line 9 to page 2, line 2 (hereinafter the APA).

ARGUMENT

1st Ground of Rejection (Issue 1)

With respect to Claim 1

The Examiner relies on Schermutzki as “sequentially applying thermoplastic material, textile and thermoplastic material in order to provide thermoplastic material on both sides of a textile sheet.” Examiner’s Answer at the paragraph bridging pages 5 and 6 (emphasis in original). Appellants respectfully disagree because the Examiner’s interpretation of the claim, and his reliance on Schermutzki are mistaken.

First, the Examiner’s interpretation of the claims is mistaken. Claim 1 does not generically recite applying thermoplastic material, textile and thermoplastic material. Instead, the claim specifically recites “scattering powder, granules or pellets of a thermoplastic material”.

Second, the Examiner’s reliance on Schermutzki is mistaken.

The Examiner specifically relies on Schermutzki’s Fig. 4, in asserting that device 11d applies thermoplastic particles downstream of the location at which belt 4 is disposed over belt 40, i.e., vicinity of roller 9. See also, Examiner’s Answer at page 7, lines 6-17, at page 12, 2nd full paragraph, lines 6-11, and at page 13, lines 7-10. However, device 11d does not apply particles onto the substrate 4 but, instead, applies particles onto a coating already existing on the substrate 4 by virtue of any one of the devices 11, 11b, 21, and 11c. That is, by the time the substrate 4 reaches device 11d it is already coated such that device 11d applies particles onto a coating on the substrate 4; not onto the substrate itself, as set forth in claim 1.

In reply to the above argument, the Examiner asserts that claim 1 does not exclude Schermutzki’s configuration wherein particles are applied onto an already coated substrate downstream of the substrate’s application over a first coating. See the Examiner’s Answer at page 13, 2nd full paragraph. Appellants respectfully disagree. Claim 1 sets forth “applying a second substrate over [a] first coating” and “scattering powder, granules or pellets of a thermoplastic material onto the second substrate, after said second substrate has been applied

over the first coating, to form a second coating". Thus, the claims include the terminology "second coating" and "second substrate" to refer to a coated substrate and an uncoated substrate respectively. Because the powder, granules or pellets are applied "onto the second substrate", they are applied onto an uncoated substrate, i.e., they are not applied onto some "coating", but to the substrate itself. In this regard, the claims are distinguishable from Schermutzki's configuration wherein a device 11d applies particles to an already coated substrate downstream of the location 9 where the second substrate 4 is applied over a first coating on belt 40.

The Examiner also mistakenly attempts to rely on Schermutzki's Fig. 1 as teaching a sequential application of thermoplastic (powder, granules, or pellets), textile, and thermoplastic (powder, granules, or pellets), as set forth in claim 1. See the Examiner's Answer at page 13, lines 4-6. Specifically, the Examiner asserts that device 6 applies a thermoplastic to the textile 4. But by the time the thermoplastic from device 6 meets the substrate 4, it is no longer in powder, granule, or pellet, form. Instead, device 6 applies thermoplastic granules to the belt 1, which is heated by a heating installation below the flight 1a of the belt 1, so that the thermoplastic starts to melt by the time it is applied to substrate 4. See Schermutzki at the paragraph bridging columns 3 and 4. Accordingly, Schermutzki's Fig. 1 fails to teach or suggest "scattering powder, granules or pellets of a thermoplastic material onto [a] second substrate, after said second substrate has been applied over the first coating", as set forth in claim 1.

With respect to Claim 32

The Examiner asserts that Schermutzki teaches substrate 4 is "contacting" with a coating on belt 40 at the location of roller 9 because, at least in part, Schermutzki fails to disclose that a gap is maintained. Examiner's Answer at the paragraph bridging pages 15 and 16. The Examiner's interpretation of Schermutzki is wrong. In just the same manner, Schermutzki fails to disclose that the substrate 4 contacts any coating on the belt 40 at the location of roller 9. Accordingly, at best, Schermutzki is ambiguous as to whether or not substrate 4 contacts a coating on belt 40 at the location of roller 9. And any ambiguity in the reference should be construed against the Examiner. See *In re Robertson*, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999).

Accordingly, in light of *Robertson*, Schermutzki should be interpreted as not teaching contact between substrate 4 and any coating on belt 40 at the location of roller 9, i.e., upstream of the location at which device 11d applies particles onto a coating on substrate 4.

CONCLUSION

For the above reasons as well as the reasons set forth in Appeal Brief, Appellants respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,



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23373
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Date: December 20, 2004